

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
PROVIDENCE ZUMBO, as Administratrix of the
Estate of JOHN ZUMBO a/k/a JOHN D. ZUMBO,

CIV. NO. 07 CV 6340 (LMM)

Plaintiff,

-against-

T. AND B. EQUIPMENT COMPANY, INC.,
ALLEN GEORGE ROTHENBERGER,

Defendants.
-----X

EXHIBIT "C"

TO

**DECLARATION IN SUPPORT OF
PLAINTIFF'S IN LIMINE
MOTION**

1
2 from Lewis Johs Avallone Aviles, 30 Vesey
3 Street, New York, New York 10007. I
4 represent T. And B. Equipment Company and
5 Allen George Rothenberger.

6 THE VIDEOGRAPHER: Will the court
7 reporter please swear in the witness.

8 **A L L E N G E O R G E R O T H E N B E R G E R,**
9 having been first duly sworn, was examined
10 and testified as follows:

11 **EXAMINATION BY**

12 **MR. TUCKER:**

13 Q. Please state your name and address
14 for the record.

15 A. Allen George Rothenberger,
16 871 Jefferson Drive, Palmyra, Virginia 22963.

17 MR. TUCKER: Just for the record,
18 also present is William Hershkowitz,
19 paralegal with the firm of Kurzman
20 Karelsen & Frank, and Providence Zumbo,
21 the plaintiff.

22 Q. Good morning, Mr. Rothenberger.

23 A. Good morning.

24 Q. Mr. Rothenberger, I just ask
25 you -- I'm going to be taking your deposition

1 A. Rothenberger

2 years, correct?

3 A. Correct.

4 Q. You're still employed with them now?

5 A. Yes, I am.

6 Q. So I'll get back to T. And B. I
7 just want to ask some other questions before we
8 move on to T. And B.

9 Any other certificates that you've
10 obtained outside of your commercial driver's
11 license relative to working driving trucks?

12 A. No.

13 Q. Any other training courses that you
14 went through after the orientation with Swift?

15 A. No.

16 Q. Did you undergo any orientation or
17 training when you worked for Sanders?

18 A. No.

19 Q. Can you tell us where you've lived
20 in the last ten years?

21 A. Virginia. I'm presently living in
22 Phoenix, Arizona now.

23 Q. How long have you lived in Phoenix?

24 A. Four months, five months.

25 Q. And prior to living in Phoenix?

1 A. Rothenberger

2 A. Virginia.

3 Q. And where in Virginia?

4 A. Richmond, Virginia and then Palmyra,
5 Virginia.

6 Q. Well, I asked before your address
7 and I think you gave us a Palmyra --

8 A. Yes, I gave Palmyra. That's where
9 my ex-wife lives. I just -- I'm an
10 over-the-road driver. I go back and forth.
11 Sometimes I go back to Virginia and visit her.

12 Q. Do you have an address in Phoenix?

13 A. I have a P.O. box, that's it.

14 Q. Do you live somewhere in Phoenix, do
15 you have an apartment?

16 A. I pretty much stay in my truck
17 whenever I'm there.

18 Q. So you have no house or apartment or
19 anything?

20 A. No, I primarily live in my truck.

21 Q. So when you go back to Phoenix, you
22 live in your truck?

23 A. Basically, yes.

24 Q. And where do you do that, where do
25 you --

1 A. Rothenberger

2 quarter to seven, around seven o'clock.

3 Q. Do you have an alarm clock in the
4 truck?

5 A. I have a little alarm clock but
6 sometimes I don't really even use it.

7 Q. Was there a particular time that you
8 had to arrive at the country club you were
9 driving to after you left Westchester?

10 A. No.

11 Q. Was there any particular time that
12 you were expected to be there?

13 A. Not really, no set time. Just, you
14 know, standard procedure like, you know, before
15 like nine or ten o'clock.

16 Q. What was the load that you were
17 picking up at Westchester Country Club, did you
18 know what it was before you got there?

19 A. It was -- no, it was just the
20 typical materials that they use for the events.
21 It was already loaded and strapped down, it was
22 already set up. All I had to do was just go
23 hook to it and leave.

24 Q. Do you know who did that?

25 A. No, it was the crew that was there.

1 A. Rothenberger

2 I don't know who exactly was there.

3 Q. Do you know if it was a T. And B.
4 crew?

5 A. Oh, it was a T. And B. crew, yes.
6 The T. And B. crew does all the loading and
7 unloading.

8 Q. So a T. And B. crew, as far as you
9 know, went to Westchester Country Club and
10 loaded that tractor-trailer?

11 A. Yes, it was already loaded when I
12 got there, it was already loaded.

13 Q. Was that T. And B. Equipment that
14 was on the trailer?

15 A. Yes. Yes.

16 Q. Did any of that belong to the
17 country club?

18 A. No.

19 Q. Do you know when they loaded that
20 trailer?

21 A. I could assume it was the day before
22 I picked it up.

23 Q. So what was the plan, that you would
24 take that over to the other country club? Do
25 you know where you were going?

1 A. Rothenberger

2 A. Yes. Yes. Yes, I did.

3 Q. Where was that?

4 A. It's a golf course, it's right there
5 off of 95, right up around the corner. It was
6 where they had the U.S. Open at. I don't know
7 the exact name of the golf course.

8 Q. Had you been there before?

9 A. Yes, I'd been there before.

10 Q. When?

11 A. Several occasions.

12 Q. So you knew how you were going to
13 get there?

14 A. Oh, yes, I did.

15 Q. Memory or did you look at your map?

16 A. Memory.

17 Q. I'm sorry, you may have just
18 answered that and I apologize. When was the
19 last time you were there prior to the day of
20 the accident?

21 A. Prior to that, I really don't
22 remember it. I'd been there on several
23 different occasions. It may have been a week,
24 couple weeks before then.

25 Q. What were you doing there a couple

1 A. Rothenberger

2 weeks before then?

3 A. Delivering, delivering stuff,
4 materials.

5 Q. Did you pick those materials up at
6 the Westchester Country Club on that occasion
7 prior to the accident similar to what you did
8 here?

9 A. I don't understand the question.

10 Q. You said that you were there several
11 weeks prior to the accident?

12 A. At Westchester or the other golf
13 course?

14 Q. Okay. The other golf course.

15 A. The other golf course I'd been in
16 and out before then. I really can't remember
17 the exact dates.

18 Q. Is that Windfoot, the other golf
19 course?

20 A. It was where they had the U.S. Open
21 at. It's right there off of 95.

22 Q. Okay. But you had been there
23 several weeks prior to the date of the accident?

24 A. I can't remember the exact dates. I
25 had been there before though, yes.

1 A. Rothenberger

2 Q. I asked you before how soon before
3 that and you said it could have been several
4 weeks.

5 A. It could have been a week or two, a
6 couple weeks before. I really don't remember.

7 Q. Were you taking equipment directly
8 to that golf course from another location or is
9 it another situation where you were picking it
10 up at Westchester and bringing it there?

11 A. The morning of the accident?

12 Q. No, prior to.

13 A. Prior to was just taking loads there
14 specifically.

15 Q. Okay. Directly from another
16 location, not Westchester Country Club?

17 A. Yes, from another location.

18 Q. Okay. What did you do when you woke
19 up that morning, the morning of the accident?

20 A. I got up. Right there at the golf
21 course they have a facility that the grounds
22 keepers use where they have, you know, a
23 latrine and a, you know, a spigot, you know, to
24 like, you know, to use like to wash your face
25 with. I went in there and I used -- you know,

1 A. Rothenberger

2 got ready.

3 Q. Was there anybody there?

4 A. Yes, there were the grounds keepers
5 and everybody was there. Like I said, I went
6 in and I used the latrine and the facilities
7 and they had a drink machine there, I got some
8 a drink out of the drink machine, and then I
9 went ahead and hooked up the truck and checked
10 the straps on the load and everything and --

11 Q. You stated before that you hooked up
12 the truck the night before. What did you do in
13 the morning additional?

14 A. I checked the load for the straps,
15 make sure the straps were all secure, the
16 load's secure, and then I rolled up the landing
17 gear and hooked up the air lines and made sure
18 the kingpin is locked correctly and checked the
19 tires and everything on the trailer.

20 Q. When you checked the load, what did
21 you do specifically? You mentioned checking
22 the straps.

23 A. Okay. You look and you see how the
24 load is strapped down, make sure that
25 everything is secure. If you need to put

1 A. Rothenberger

2 additional straps on it, if you feel that you
3 need additional straps, you just take care of
4 that at the time, and then you make sure that
5 all straps are all tight.

6 MR. TUCKER: I'm going to ask that
7 this photo be marked as Exhibit 2.

8 John, would it be helpful if I
9 marked all the photos like 2-A, -B, -C
10 and -D even if we get back to them later
11 or do you want to just make them
12 sequentially different?

13 MR. HORAN: It's up to you.

14 MR. TUCKER: I'd like to just put
15 them altogether as 2, 2-A, 2-B.

16 MR. HORAN: Oh, I see what you're
17 saying. So all photos have a 2 in front
18 of them.

19 MR. TUCKER: Yes.

20 MR. HORAN: That's fine.

21 MR. TUCKER: Okay.

22 (Plaintiff's Exhibit 2, Photograph,
23 marked for identification, as of this
24 date.)

25 Q. I hand you what's been marked

1 A. Rothenberger

2 Exhibit 2; do you see that?

3 A. Yes, I see it.

4 Q. Is that the truck that you were
5 driving at the time from -- the date of the
6 accident?

7 A. Yes, it is.

8 Q. Describe for me the truck. Tell me
9 about the truck.

10 A. It's a 2007 International 9400-I.

11 Q. Okay. Is it standard?

12 A. Yes, it is.

13 Q. Had you driven a truck like this
14 prior to the -- withdrawn.

15 A. Yes, I had.

16 Q. Prior to your employment with
17 T. And B., had you driven a truck like this?

18 A. I've never -- I driven other
19 truck -- other tractors. This right here was
20 the first International brand that I'd driven.

21 Q. How is the International brand
22 different than the other trucks that you drove?

23 A. They're basically all the same.

24 Q. Is there any difference?

25 A. This just -- this is like saying

1 A. Rothenberger

2 you're driving either a Buick or a Ford.

3 They're all ten speeds. They either have

4 Cummings engines or Caterpillar or Detroit

5 diesels.

6 Q. What was the engine in this?

7 A. This was a Cummings.

8 Q. What was the size of the engine?

9 A. I believe it was probably a 375

10 horsepower.

11 Q. Do you know as you sit here?

12 A. Huh?

13 Q. Do you know as you sit here whether
14 it was or not?

15 A. I know it was a Cummings. I really
16 don't remember the exact size of the engine.

17 MR. HORAN: You okay?

18 Q. You okay?

19 A. Yes.

20 MR. HORAN: Take a break?

21 THE WITNESS: Yes, everything is
22 fine. It's just --

23 Q. Do you want to take a break?

24 MR. HORAN: Do you want to take a
25 break?

1 A. Rothenberger

2 Q. Why don't you take a break.

3 THE VIDEOGRAPHER: We're going off
4 the record. The time is 12:05.

5 (Recess taken.)

6 THE VIDEOGRAPHER: We are now back
7 on the record. The time is 12:09.

8 BY MR. TUCKER:

9 Q. Okay. You mentioned it's a Cummings
10 engine.

11 A. Yes.

12 Q. We talked about the size of the
13 engine and the type of transmission. What was
14 the number of gears on this?

15 A. Ten speed.

16 Q. Do you know what the gross weight of
17 the truck was unloaded?

18 A. The tractor, just the tractor alone?

19 Q. Yes.

20 A. I believe the tractor alone was
21 1800, 1800 -- 18,000 pounds, 18,000 and change.

22 Q. Do you know what the gross weight
23 loaded was at the time you were driving it?

24 A. I don't know.

25 Q. Was this a heavy load, an unusually

1 A. Rothenberger

2 heavy load, unusually light load, typical load
3 that you carry for them?

4 A. It was a typical load. I would
5 assume it was about three quarters of a load.

6 Q. Describe the cargo.

7 A. Just an array of bleacher equipment
8 that they use for the bleachers. It's
9 different components that they had on the load.

10 Q. Now, you mentioned before that
11 T. And B. had given you a pamphlet on the
12 safety of cargo loads; do you recall that?

13 A. Yes, I do.

14 Q. Okay. And you're familiar with what
15 is a safe and unsafe load?

16 A. Yes, I am.

17 Q. And that is relative to the position
18 of the cargo on the trailer, correct?

19 Do you understand what I'm asking?

20 A. I understand. I'm trying to analyze
21 how to answer your question.

22 Every load is different. It just
23 depends on whatever that load consists of.
24 After you've hauled enough of these loads, it
25 -- you eventually just become accustomed to

1 A. Rothenberger
2 whatever is on that specific load and how to go
3 about securing it.

4 Q. So there's no real set formula for
5 setting up a load?

6 MR. HORAN: If you know.

7 A. Nothing specific. It just depends
8 on what they want to transport on that
9 particular load.

10 They have a set procedure to secure
11 the components prior to putting them on the
12 truck as far as racks and different types of
13 baskets or racks to secure whatever type
14 products or whatever the components are that
15 they're going to load up on the trailer at that
16 time.

17 Q. Do you know if T. And B. trains the
18 crew that does the loading on the safe
19 procedure for putting a load on a trailer?

20 A. I'm really not involved in that, in
21 that particular, you know, in that particular
22 field. I really -- you'd have to discuss that
23 with the operations manager.

24 Q. Okay.

25 A. I assume they do.

1 A. Rothenberger

2 Q. I hand you what I'd like marked,
3 which I'd like marked as 2-A.

4 (Plaintiff's Exhibit 2-A,
5 Photograph, marked for identification, as
6 of this date.)

7 Q. I've handed you a photograph that's
8 been marked as Plaintiff's 2-A; do you see
9 that?

10 A. Yes, I see it.

11 Q. And that's the load that you were
12 carrying that day?

13 A. Yes, it appears to be the load.

14 Q. What are those items in the front
15 the closest to the cab of the semi, it looks
16 like metal poles?

17 A. Are you referring to right here, the
18 baskets here?

19 Q. Yes.

20 A. Those appear to be baskets, post
21 it -- I believe the term for those is "post it
22 picket."

23 Q. Post it picket?

24 A. Yes.

25 Q. What is that?

1 A. Rothenberger

2 A. It's the barrier. Whenever they
3 build the floor, at the front when you walk up
4 the steps for the bleacher that they put --
5 it's the barrier in the front of the bleacher.

6 Q. Is that --

7 A. If I had a picture of the bleacher I
8 could show you what I'm referring to.

9 Q. Is that all metal poles, metal piping?

10 A. This here?

11 Q. Yes.

12 A. They are -- if you see right here,
13 you take those and you stand them up. They're
14 like six feet long by like I believe like maybe
15 three feet tall and they put them in the front
16 of the bleacher. Whenever you walk up the
17 steps and you're walking down the platform,
18 they use these for the barrier to keep people
19 from falling off the front of the --

20 MR. HORAN: Platform.

21 A. Of the platform.

22 Q. Is that all made of metal, all those
23 materials in there?

24 A. Yes, these are.

25 Q. And behind there it seems -- it

1 A. Rothenberger

2 looks like there's some different materials, it
3 looks like there's metal slatted materials; do
4 you see that?

5 A. These are decks.

6 Q. What are they called?

7 A. Decks.

8 Q. Decks, is that the bleacher deck?

9 A. Yes, they use that for the platform.

10 Q. Okay. And is that all bleacher deck
11 or is there something below the bleacher deck?
12 It looks like there's a --

13 A. There's plywood below it.

14 Q. Okay. Plywood below it and then the
15 bleacher decks are put on top that of?

16 A. That's just how they loaded it.

17 Q. And those bleacher decks seemed to
18 have dislodged after the accident or --

19 A. Yes.

20 Q. -- at the time of the accident; do
21 you see that?

22 A. Yes.

23 Q. Behind the bleacher decks and the
24 wood that it sits on top of there appears to be
25 a wooden crate of some sort; do you see that?

1 A. Rothenberger

2 A. Yes, I see it.

3 Q. Is that a wooden crate?

4 A. Yes, it is.

5 Q. Do you know what's in there?

6 A. I wouldn't know, have any idea.

7 Q. Did you know at the time?

8 A. No, I did not.

9 Q. Have you spoken to anybody about
10 what this is since the time of the accident?

11 A. No, I have not.

12 Q. Okay. And on top of that wooden
13 deck, what is that? It looks like more metal
14 piping or stanchion.

15 A. I believe that's steps.

16 Q. Okay. And then after that wooden,
17 appears to be the wooden crate, do you see the
18 material that's strapped down?

19 A. Yes, I do.

20 Q. What is that?

21 A. Those are handrails.

22 Q. Handrails for the bleachers?

23 A. Yes.

24 Q. And there's a smaller amount of
25 materials there; do you see that? It's not as

1 A. Rothenberger

2 high as --

3 A. No, I'm sorry, I misunderstood. Are
4 you referring to this --

5 Q. Yes.

6 A. -- pile here?

7 Q. Yes, right behind the wooden crate.

8 A. These are handrails.

9 Q. Okay. So there's a smaller amount
10 of handrails. It seems like the load is higher
11 from the top and goes down lower all the way to
12 the back; do you see that?

13 A. Yes, I do see that.

14 Q. Is that the way it was loaded when
15 you picked up this trailer?

16 A. Yes, it was. It was already loaded.

17 Q. Okay. And then behind the handrails
18 it appears that there's some sort of rolled up
19 material.

20 A. That's the rolled bunting.

21 Q. I'm sorry, could you say that again.

22 A. Bunting.

23 Q. Bunning, b-u-n-n-i-n-g?

24 A. No, bunting.

25 Q. Oh, bunting.

1 A. Rothenberger

2 Okay. And what's the bunting used
3 for?

4 A. They use that around the bottom of
5 the bleacher to wrap around, I guess it's for
6 security purposes, I imagine to keep you from
7 walking underneath the bleacher or for visual
8 effects.

9 Q. But that bunting material is a
10 lighter material than the metal objects that
11 you described before, correct?

12 A. I would imagine so, yes. I'm not
13 sure of the exact weight but.

14 Q. Would you say it's lighter than most
15 of the other materials on the trailer?

16 A. Yes, I would imagine. To guess I
17 would say yes.

18 Q. It appears --

19 A. It appears how big a roll it is and
20 how long it is as far as the extent of the
21 weight of it is.

22 Q. The one thing I'll ask you not to do
23 is guess.

24 MR. HORAN: Thank you.

25 Q. I tried to beat Mr. Horan to that.

1 A. Rothenberger

2 We don't want you to guess. If you don't know,
3 just say you don't know.

4 A. I don't know the exact.

5 Q. Does it appear to you that the
6 heavier part of this load is at the front of
7 the trailer and it gets progressively lighter
8 as it goes back?

9 A. It appears that way.

10 Q. Is that consistent from what you
11 know or what T. And B. taught you to be the
12 proper way to load a trailer?

13 A. Yes.

14 MR. HORAN: Just note my objection
15 to the extent that I think you said
16 taught him the proper way to load a
17 trailer.

18 Q. The proper way that a trailer should
19 be loaded.

20 A. Yes, this is the proper way for that
21 load to be loaded.

22 Q. So your understanding of what you
23 received from the safety manuals at T. And B.
24 and your instruction, whatever it was that you
25 received at T. And B., that the heavier portion

1 A. Rothenberger
2 of the load should be at the front of the
3 trailer?

4 MR. HORAN: Note my objection.
5 You can answer.

6 A. It doesn't matter. It's irrelevant
7 whether the heavy load's at the front or the
8 back as long as the weight of the load, it
9 doesn't exceed 34,000 pounds per each tandem.

10 Q. Each tandem, and when you refer to
11 tandem, you're talking about the tandem wheels?

12 A. I'm talking about, referring the
13 whole tandem set at the rear.

14 Q. Okay.

15 A. You're allowed to have 34,000 max at
16 the rear and 34,000 max at the front.

17 Q. So you're essentially looking to
18 make sure that it doesn't exceed the 34,000
19 pounds?

20 A. For that, for that tandem.

21 Q. Does it matter at all where the
22 weight is -- withdrawn.

23 If the weight is less than 34
24 pounds, does it matter --

25 A. 34,000.

1 A. Rothenberger

2 Q. 34,000 pounds, thank you.

3 Does it matter -- it's your
4 understanding it doesn't matter where that load
5 is on the trailer?

6 A. It's irrelevant as long as the
7 load's secure.

8 MR. TUCKER: John, just for your
9 information, I think I'll be able to give
10 you these copies. I'm just using them
11 now so I can look at them.

12 MR. HORAN: Afterwards.

13 MR. TUCKER: Afterwards.

14 Q. After you washed up the morning of
15 July 7th and checked the load, did you do any
16 maintenance check on the vehicle?

17 A. Yes, I did all that when I hooked up
18 the air lines and rolled up the landing gear
19 and secured the load. You know, when I went to
20 the back and made sure the straps are all tight
21 and all that, you know, then, you know, just
22 check the tires on the trailer.

23 Q. What did you do after that --
24 withdrawn.

25 Did you speak to any of the

1 A. Rothenberger

2 maintenance workers or the people inside the
3 country club?

4 A. No, I just -- you know, they were
5 out there doing their thing and, you know,
6 everybody, you know, hustle and bustle.

7 Q. Did you speak to anyone at
8 Westchester Country Club before you left that
9 morning?

10 A. No. No, I didn't.

11 Q. When you went through the gate
12 leaving the country club, was there anybody
13 there?

14 A. There wasn't anybody. There were
15 people out there on the golf course mowing and
16 stuff, but I just pretty much just went ahead
17 and drove on out.

18 Q. And where did you go?

19 A. I pulled out and went around and
20 then I went down the road to the red light
21 that's right there, I believe it's 22A, 22A,
22 and then I hung a left from there.

23 Q. Was the light red when you got
24 there?

25 A. Yes, the light was red and then I

1 A. Rothenberger

2 sat there and then I pulled out and took a
3 left.

4 Q. Where were you heading?

5 A. I was heading down to -- I'm not
6 sure of the exact number of the road. It's --
7 you go down to the stop sign and I took a right
8 and I went down around the curve up underneath
9 the bridge right there, on that road right
10 there.

11 Q. Do you know what bridge that was?

12 A. It was the bridge for 287, it went
13 over that road there.

14 Q. That's a busy road, 287?

15 A. Yes, it was a highway, the highway
16 right there.

17 Q. So you made a left after the
18 stoplight?

19 A. I pulled out of the golf course --

20 Q. Right.

21 A. -- and I went down to the main road
22 and I went to the stoplight and then I took a
23 left and went down that road to the stop sign,
24 and when I stopped at the stop sign, then I
25 took a right and went down around the curve up

1 A. Rothenberger

2 underneath the bridge for 287.

3 Q. Describe that curve that you went
4 on, was it a right curve, a left curve?

5 A. It goes from the left around to the
6 right.

7 Q. How fast were you traveling at that
8 time?

9 MR. HORAN: At what time?

10 Q. When you took the curve.

11 A. When I --

12 MR. HORAN: Note my objection.

13 You can answer if you can.

14 Q. Well, did you drive up along that
15 curve?

16 A. Yes, I was in the right-hand lane
17 going around the curve right there.

18 Q. Okay. And how fast were you going
19 when you were driving in the right-hand lane?

20 MR. HORAN: Note my objection.

21 You can answer it.

22 A. 30, maybe 35, if that. I wasn't,
23 you know -- I was going slow. I was maybe
24 doing 30 miles an hour.

25 Q. Describe the road conditions.

1 A. Rothenberger

2 A. It was dry, I mean it was clear
3 weather.

4 Q. Was it sunny, was it dark?

5 A. It was sunny, yes.

6 Q. It wasn't raining?

7 A. No.

8 Q. Had you been on that road before?

9 A. Oh, yes.

10 Q. How many times?

11 A. I really don't -- can't -- you know,
12 it's been multiple times I've been on it. That
13 wasn't the first time I was on that road.

14 Q. Okay. What else was on that road,
15 can you describe anything, any signs or
16 anything?

17 A. Right before you get to the bridge
18 when you're going around the curve when you're
19 getting ready to go up underneath the bridge
20 they have a blinking sign there that says
21 signal ahead.

22 Q. What color was the blinking light?

23 A. It's a blinking yellow light.

24 Q. Was it operating at the time?

25 A. Yes, it was operating.

1 A. Rothenberger

2 Q. And what did you understand that to
3 mean?

4 A. That there's a red light ahead.

5 Q. Any other signs that you noticed on
6 the way around that curve?

7 A. No, that's the only sign. Before
8 you get to the bridge, you go up underneath the
9 bridge, that's the only sign that's there.

10 Q. What happened, did you pass that
11 yellow light, blinking light -- withdrawn.

12 How fast were you going when you
13 passed that yellow light?

14 A. I had slowed down, I was maybe doing
15 about maybe 20.

16 Q. Why?

17 A. Because when I went up underneath
18 the bridge and I was looking at the light, the
19 light was red and I was starting to slow down.

20 Q. Are you heading uphill or downhill
21 when you're going around that curve?

22 A. You're going downhill, it's a
23 downgrade.

24 Q. Okay. So you're in the right-hand
25 lane, you're going downgrade and you see this

1 A. Rothenberger

2 yellow light and you start to slow down?

3 A. Yes. Well, I started slowing down.

4 Q. Okay. And you say you slowed down
5 to about 20 at the time you were at that yellow
6 light maybe?

7 A. Around there.

8 Q. Okay. And how far between that
9 yellow light and the red light that you just
10 described before, what's the distance, do you
11 know?

12 A. Maybe 50 yards, maybe 100 yards,
13 about from here maybe across the street to the
14 building there. Maybe about 100 yards I'd say.

15 Q. I only smile because it's hard to
16 get that in the deposition.

17 About 100 yards you think?

18 A. Yes. I mean it wasn't, you
19 know --

20 MR. HORAN: His answer was 50 to a
21 100.

22 Q. When did you first see the red light?

23 MR. HORAN: How far was he from it
24 you mean?

25 A. Right when I went up underneath the

1 A. Rothenberger

2 bridge.

3 Q. Okay. When you first went underneath
4 the bridge, was it before you went underneath
5 the bridge, during -- at the moment you were
6 under the bridge or after you came out?

7 A. Right when I went around the grade
8 and got down to the bottom part of the -- right
9 when you get down to the bottom of the hill,
10 that's when you're going up underneath the
11 bridge to 287, that's really when it comes into
12 view, right then.

13 Q. Were you past the yellow light or
14 before the yellow light?

15 A. I was like almost like there next to
16 the yellow light then. The blinking -- the
17 sign that says signal ahead, I was probably
18 like next to it.

19 Q. So when you came up underneath the
20 bridge and you first saw the red light, what is
21 it, describe for me the light, what did the
22 light look like?

23 A. It's just a regular red, green, a
24 regular traffic light.

25 Q. A regular traffic light, does it

1 A. Rothenberger

2 have three?

3 A. Yes. Yes.

4 Q. And the top one you don't -- was the
5 red on the top, on the bottom? Describe the
6 light for me.

7 A. The red's on top.

8 Q. Okay. So you remember seeing the
9 red --

10 A. Yes, I do.

11 Q. -- displayed?

12 A. Yes, I do.

13 Q. Do you recall any green displayed
14 during that time at all?

15 A. Right when I went up underneath the
16 bridge, then the light changed to green. Then I
17 started to accelerate.

18 Q. Describe for me the moment that you
19 saw it turn to green.

20 MR. HORAN: Objection.

21 What you do mean? I don't
22 understand the question.

23 Q. You were underneath the bridge,
24 correct? When you come out, you said you were
25 right next to the yellow blinking light and

1 A. Rothenberger
2 just about at the bottom of the grade towards
3 the underpass?

4 MR. HORAN: Objection.

5 What's your question?

6 MR. TUCKER: Can you read back,
7 I'm sorry, when he said he first saw the
8 red light.

9 (Record read.)

10 Q. So you also testified before you
11 were traveling around 20 miles an hour at that
12 point when you went underneath the bridge?

13 MR. HORAN: Objection.

14 You can answer.

15 Q. Is that correct or incorrect?

16 MR. HORAN: You can answer.

17 A. Around there. I, you know --

18 Q. Okay.

19 A. -- I'd slowed down, I let off the
20 diesel, I'd take the truck out of gear. I was
21 like more or less coasting at that time.

22 Q. And you were preparing to stop at
23 the red light?

24 A. Yes, and then the light changed and
25 I put the truck back in gear and started to

1 A. Rothenberger

2 accelerate.

3 Q. Where were you when you saw the
4 light turn to green?

5 A. Right when I was going up
6 underneath, I believe it was right when I
7 passed the sign when I was going up underneath
8 the bridge.

9 Q. Okay.

10 A. That's when I saw it.

11 Q. So at the time you were underneath
12 the bridge you saw it red and then at the same
13 moment that's about when you saw it turn to
14 green; is that your --

15 A. Yes.

16 Q. -- testimony?

17 A. Yes.

18 Q. Okay. Was there any obstruction
19 between you and the light?

20 A. No, there wasn't.

21 Q. Okay. Anything else about the
22 traffic light that you recall?

23 A. No.

24 Q. Was there other traffic around you
25 at the time, any cars or trucks in your lane in

1 A. Rothenberger

2 front of you?

3 A. No.

4 Q. Anybody behind you in your lane?

5 A. No.

6 Q. How about in the left-hand lane?

7 A. I believe there were cars driving
8 over there at the time.

9 Q. What do you mean over there?

10 A. Over on the other side on the
11 left -- oh, you mean in the left lane going the
12 same direction I was?

13 Q. Same direction you were.

14 A. No, there wasn't anybody there.

15 Q. How many lanes going in your
16 direction?

17 A. Two lanes.

18 Q. Were there any lanes coming in the
19 opposite direction?

20 A. There are but it's over on the other
21 side of the median, this median right here in
22 the picture. It's on the other side of this
23 median here.

24 Q. Were there any cars in the other
25 lanes moving in the opposite direction?

1 A. Rothenberger

2 A. Yes, I believe there were. It's
3 been a while but I believe there were cars,
4 yes, there were cars running over there.

5 Q. Were there any cars in front of you
6 in either the left or the right lane that you
7 were in?

8 A. In my lane?

9 Q. Or the left lane going in the same
10 direction.

11 A. No.

12 Q. How far in the distance could you
13 see when you were underneath the overpass?

14 A. I'd say maybe a half, maybe a
15 quarter of a mile maybe. I could see up ahead
16 the road where the road curves and then the
17 road pretty much went out of view.

18 Q. When you say the road curves, is
19 that the road that you were on?

20 A. Yes. When you go through the light,
21 the road goes down and then it curves to the
22 right.

23 Q. And you could see that?

24 A. Yes, I could see that.

25 Q. And you saw no cars?

1 A. Rothenberger

2 A. No, there weren't any cars going the
3 direction I was going.

4 Q. The light that you saw turn green,
5 was that a cross street, an intersection,
6 describe --

7 A. It's a cross street.

8 Q. Okay. And describe the street that
9 intersects there.

10 A. It's a one-lane road going each
11 direction with a lane that turns, a separate
12 lane for a turn lane.

13 Q. Is there a light for that street?

14 A. Yes, there is.

15 Q. So there's a light --

16 A. Well, it's the same red light for
17 the light on the road that I was on.

18 Q. Are there any other lights in that
19 location, any other streetlights that you
20 noticed?

21 A. No, there's none for my lane.

22 Q. But are there any other streetlights
23 hanging from wires at that location?

24 A. There's one other light for a lane
25 to get on the highway but it's just an arrow

1 A. Rothenberger

2 light, an arrow for a separate lane to get on
3 the highway.

4 Q. Where is that located in relation to
5 the light that you were looking at that turned
6 green?

7 A. It's to the right.

8 Q. It's to the right of that light?

9 A. Yes.

10 Q. Is it connected to it or is it
11 separate from?

12 A. No, it's a separate light.

13 Q. And it's a green light indicating
14 what?

15 A. With an arrow to get on, to take a
16 right to get onto 287.

17 Q. To get onto 287?

18 A. Correct.

19 Q. So the street that you --

20 A. Or 270 -- it might be 278. I
21 believe it's 2 -- yes, it's 287.

22 Q. And you were going straight or were
23 you turning, were you veering right to go onto
24 287?

25 A. I was going straight.

1 A. Rothenberger

2 Q. Was that green arrow lit at the time
3 that you were coming under the overpass?

4 A. Yes, it was lit.

5 Q. Was it lit at the time that the
6 light was red?

7 A. Yes, it was lit.

8 Q. And was it lit at the time it turned
9 to green?

10 A. Yes, it was lit.

11 Q. Now, the other street that
12 intersected is called Webb Avenue?

13 A. Yes, it is.

14 Q. Describe the traffic on Webb Avenue
15 when you came under the overpass.

16 A. There was a car that had stopped on
17 Webb and he had stopped there and he was
18 getting ready to take a right-hand turn right
19 when I was coming up to the light.

20 Q. He was going to take a right-hand
21 turn onto the road that you were traveling on?

22 A. Correct, off of Webb.

23 Q. So he would have been in front of
24 you if he had the right-of-way, right?

25 A. Yes, but he had stopped. He was

1 A. Rothenberger

2 sitting there, I was looking at him and he was
3 looking at me.

4 Q. But he was heading in the direction
5 that you were?

6 A. If he -- when he would have taken a
7 right off of Webb.

8 Q. What kind of car was that?

9 A. I really don't remember. I really
10 don't know the make of it. It was a light
11 colored vehicle. It looked like it was
12 four-door sedan. I believe, like I said, it
13 was an older model.

14 Q. Once you saw the light turn green,
15 you mentioned before that you accelerated?

16 A. I put the truck back in gear and
17 started to accelerate.

18 Q. What gear were you in when you were
19 underneath the overpass and you saw the light
20 red?

21 A. I believe I probably gotten up to
22 six gear, I was going in the high range then.

23 Q. What does that mean?

24 A. That means going from fifth, you
25 flip up your switch and then you go over to get

1 A. Rothenberger

2 it to go from six up to tenth.

3 Maybe I -- I really can't remember,
4 to be honest with you.

5 Q. So --

6 A. After a while you don't even, to be
7 honest with you, after a while --

8 MR. HORAN: Just answer his
9 question.

10 A. I really don't remember.

11 Q. You were going to say after a while
12 you don't really what?

13 A. You more or less just listen to
14 the engine and listen for the amount for the
15 speed you're going, it becomes second nature.

16 Q. Rather than thinking the specific
17 gear you're in?

18 A. I mean, you know, if you drive a
19 vehicle for thousands of miles, after a while
20 -- I really can't remember the exact gear.

21 Q. So you accelerated at that point
22 when you saw the light turn green by shifting
23 what, into another gear?

24 A. I believe I'd gone over to sixth
25 gear then when I started to accelerate.

1 A. Rothenberger

2 Q. And what speed were you going at
3 that point?

4 MR. HORAN: When he started to
5 accelerate?

6 MR. TUCKER: Exactly.

7 A. I probably clicked back up to maybe
8 about 25, maybe about 30 miles an hour.

9 Q. You were coming downhill at the time?

10 A. It was after I'd gotten to the
11 bottom of the hill and going up underneath the
12 bridge and then I clicked it into gear and
13 started to kick it on up again.

14 Q. So when you came to the bottom of
15 the hill, you clicked it into gear to pick up
16 acceleration?

17 A. When I started to accelerate, then I
18 kicked it back into gear.

19 Q. And that was just at the bottom of
20 the hill?

21 A. Yes, right when I was going around
22 the curve up underneath the bridge right there.

23 Q. I just want to kind of get a
24 picture. You're coming downhill and you're in
25 the right-hand lane, correct?

1 A. Rothenberger

2 A. It's --

3 MR. HORAN: Listen to him. Say
4 correct.

5 Q. Yes or no?

6 MR. HORAN: Is that correct?

7 A. Yes, correct.

8 Q. You may want to just move your hand
9 away from your mouth --

10 A. Okay.

11 Q. -- so it's clear on the video.

12 You're coming downhill, you're in
13 the right-hand lane and once you get under the
14 overpass you see the light turn green and you
15 change gears; is that correct?

16 A. I kicked, I put -- I kicked it into
17 gear.

18 Q. Okay. And that accelerates the
19 truck; is that correct?

20 A. Correct.

21 Q. Okay. And then you accelerated
22 going through the green light because you saw
23 the green light for your lane?

24 A. Correct.

25 Q. Okay. What happened at that point?

1 A. Rothenberger

2 A. I was looking at the gentleman who
3 was going to make a right-hand turn, and then I
4 noticed a vehicle out of my peripheral vision
5 and when I looked over, I saw the white SUV
6 down, you know, flying down through there. A
7 split second later he ran into the side of my
8 truck, into the front of the vehicle right
9 here.

10 Q. What was the other vehicle doing,
11 was it stopped at the light, was it moving?

12 A. The vehicle that hit the truck or
13 the other vehicle?

14 Q. The other vehicle that was on --

15 A. He was sitting at the light, sitting
16 there looking at me when I was coming up on the
17 intersection.

18 Q. Did you tell the police about that
19 vehicle sitting there?

20 A. Yes, I did.

21 Q. Did you describe the vehicle for the
22 police?

23 A. I don't remember. I believe I may
24 have. I don't remember.

25 Q. Do you know if that vehicle stayed

1 A. Rothenberger

2 ambulance there as quick as they could.

3 Q. Did anyone come up and join you
4 while you were on the telephone?

5 A. Yes, I believe there was a lady that
6 -- a lady stopped and came up there, too, and
7 then a few people started coming around.

8 It wasn't very long after that the
9 police, one of the police officers arrived. It
10 was -- he was like right there within I'd say
11 maybe a couple minutes, if that.

12 Q. Describe for me the victim, the
13 person in the other car when you first saw him.
14 Was he alive?

15 A. Yes, he appeared to be alive but --

16 Q. How could you tell?

17 A. It appeared that he was still
18 breathing.

19 Q. Could you see his chest moving up
20 and down, could you hear him breathing, how
21 could you tell?

22 A. I could hear him breathing.

23 Q. What did it sound like?

24 A. It sounded like he was having
25 trouble breathing.

1 A. Rothenberger

2 Q. How?

3 A. It just -- I -- you know, it just
4 seemed to me like he was having trouble, you
5 know, breathing. He was unconscious.

6 And after that time, I heard the
7 police coming and I turned around and then the
8 police officer arrived and not soon after that
9 the fire engine and the ambulance arrived and
10 that's pretty -- about pretty much about all I
11 really remember after that.

12 Q. I'm going to show you three
13 photographs I'd like marked as 2-B, -C and -D.

14 (Plaintiff's Exhibit 2-B,
15 Photograph, marked for identification, as
16 of this date.)

17 (Plaintiff's Exhibit 2-C,
18 Photograph, marked for identification, as
19 of this date.)

20 (Plaintiff's Exhibit 2-D,
21 Photograph, marked for identification, as
22 of this date.)

23 MR. TUCKER: Off the record for a
24 second.

25 THE VIDEOGRAPHER: We're going off

1 A. Rothenberger

2 the record. The time is 2:21.

3 (Recess taken.)

4 THE VIDEOGRAPHER: We're now back
5 on the record. The time is 2:22.

6 MR. TUCKER: I've had marked for
7 purposes of the deposition Plaintiff's
8 2-B, 2-C and 2 -- I'm sorry and 2-D.
9 These are photographs of Mr. Zumbo after
10 the accident.

11 I had planned on showing them to
12 Mr. Rothenberger to ask him questions
13 about Mr. Zumbo at the time that he saw
14 him.

15 BY MR. TUCKER:

16 Q. Mr. Rothenberger, you've indicated
17 you'd rather not see the photographs?

18 A. I'd rather not see them. I really
19 don't see how that --

20 MR. HORAN: Okay.

21 A. I'll be honest, I'm not a medical
22 expert.

23 MR. HORAN: Okay.

24 Q. Was Mr. Zumbo bleeding at the time
25 you saw him?

1 A. Rothenberger

2 A. Yes, he was bleeding.

3 Q. Do you know where he was bleeding
4 from?

5 A. It looked like he was bleeding from
6 his nose.

7 Q. Anyplace else that you could recall?

8 A. That's all I noticed. That's all I
9 recall.

10 Q. You stated before that you went to
11 get some paper towels from your truck.

12 A. Yes.

13 Q. For what purpose, to wipe up --

14 A. To try to see if I could help.

15 Q. What were you going to do with the
16 paper towels?

17 A. I don't know. I was just trying to
18 do whatever I could try to possibly do.

19 Q. Have you had any training in first
20 aid or emergency medical care?

21 A. Not anything out of the normal that
22 anybody else has, nothing professional or
23 specific.

24 The reason I went to get the paper
25 towels was I was at least try -- I don't know